

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the
Insurance Agent
License of Thomas
Casey, Sr., License
No. 0124394.

ORDER DENYING MOTION
FOR RECONSIDERATION

This Order is before the undersigned Administrative Law Judge on Licensee's Motion for Reconsideration of the Order Dismissing Licensee's Application for Attorney's Fees dated April 6, 1995.

Thomas E. Harms, Hessian, McKasy, & Soderberg, 4700 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2228, appeared on behalf of the Licensee, Thomas Casey, Sr. Maya K. Howlett, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce.

Based on the record herein, and for reasons stated in the following Memorandum, the Administrative Law Judge makes the following:

ORDER

Licensee's Motion for Reconsideration of the Order of April 6, 1995, is DENIED.

Dated: April ____, 1995.

STEVE M. MIHALCHICK

Administrative Law Judge

MEMORANDUM

On April 6, 1995, the Administrative Law Judge issued an Order Denying Licensee's Application for Expenses and Attorney's Fees based upon the language contained in Minn. Stat. § 15.474, subd. 1, and Minn. R. 1400.8400, subp. 6. On April 10, 1995, the Administrative Law Judge received Licensee's letter Motion for

Reconsideration of the Order, arguing that the Administrative Law Judge had misinterpreted the rule. On April 11, 1995, the Department filed a letter which it stated was in response to the Motion for Reconsideration.

Minn. Stat. § 15.474, subd. 1, provides:

The Chief Administrative Law Judge shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and expenses in a contested case proceeding. If a court reviews the underlying decision of the contested case under sections 14.63 to 14.68, an award for fees and expenses may be made only under subdivision 3.

Minn. Stat. § 15.474, subd. 3(a), provides:

In awarding fees and expenses under subdivision 1 to a prevailing party in an action for judicial review of a contested case under sections 14.63 to 14.68, the court shall include in that award fees and expenses to the extent authorized in section 15.472.

Minn. R. 1400.8400, subp. 6, provides:

Application when appeal is filed. In the event that an appeal from all or any part of the final agency decision in the contested case which gives rise to the application for expenses and attorney's fees has been taken to the appropriate court, the application for fees and expenses shall be made to the court as provided by Minnesota Statutes, section [15.474], subds. 1 and 3.

Licensee argues that the rule should be read as transferring to the Court of Appeals only that portion of the fees related to that portion of the final decision being appealed. Such an interpretation makes sense to Licensee because the reviewing court is not being asked to review issues for which fees and costs are being sought and may not even have the record before it needed to determine the agency's justification for pursuing claims. Licensee also suggests that by this rule, the Office of Administrative Hearings is conferring jurisdiction upon the Court of Appeals over a matter that is not before it.

Addressing the last issue first, the purpose of the rule is to interpret the meaning of Minn. Stat. § 15.474, subd. 1. Thus, it is the statute, not the Office of Administrative Hearings, that creates the jurisdiction of the reviewing court.

As to Licensee's other argument, it does seem appropriate that the attorney's fees question must be addressed in total and not segregated into issues that have been appealed and not appealed. The principle question in allowing fees is whether the position of the agency was substantially justified. That appears to be a question that should be addressed in terms of its total action, not just individual parts of it. Moreover, the decision of the reviewing court certainly will have an impact determining the degree to which Licensee may be determined to be the prevailing party. Finally, it is difficult to determine at this point exactly what portions of the agency's original action are being appealed. The language of the statute might be subject to various interpretations, but

the language of the rule makes it clear that once the matter is appealed in any respect, it is the court that is to make the award of fees and expenses to the extent authorized by law. Licensee's Motion for Reconsideration must be denied.

S.M.M.